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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,170	07/31/2000	Michael J. Matsko	8613	4796

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EXAMINER

SHAFFER, ERIC T

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

5/10/03

**Office Action Summary**

Application No.

09/629,170

Applicant(s)

MATSKO, MICHAEL J.

Examiner

Eric T. Shaffer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/37/2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This communication is in response to the amendments filed September 23, 2003.

***Summary Of Instant Office Action***

2. Applicant's arguments, filed September 23, 2003, concerning claims 1 – 14 in the Office Action mailed June 11, 2003, have been considered and deemed unpersuasive.

None of the claims have been cancelled by the applicant and the applicant has added no new claims. Claims 1 – 14 are pending and are prosecuted in the response set out below. The only rejection in the Office Action mailed out on February 7, 2003, namely the rejection under 35 USC § 112 has been removed.

3. The claim objections to the lack of related application number references in the application specifications has been corrected by the applicant and the objection is hereby removed.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 - 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Frey et al (US 5,557,513).

As per claims 1, 4 and 11, Frey et al discloses a computer implemented method of storing a retail performance metric record, the retail performance metric record being a function of a

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retail performance metric and time type metric including the time elapsed waiting for and receiving an input, comprising the steps of:

receiving input indicative of an event occurring at a point-of-sale (POS) station during a transaction (column 5, lines 13 - 15, “an optional communications link to the store point-of-sale (POS) equipment for a real-time update of store parameters which may be used by the checkout lane alert software”);

determining the retail performance metric type of the input received at the POS station during the transaction (column 5, lines 15 - 17, “these parameters may include shopping time, checkout processing time, and conversion rate”);

recording an entry record indicative of the input received (column 5, line 3, “entry time data from the recognition system”)

recording a retail performance metric record including the retail performance metric and the retail performance metric type, the retail performance metric including the time elapsed waiting for and receiving the input (column 8, lines 40 - 41, “the maximum time wait by any shopper, average wait per shopper, maximum line length, average line length, and cashier idle time percentage”).

Repeating the steps of receiving (figure 2, “real-time processing loop”), determining (figure 3B, “buy decision this shopper” loop), recording the entry record (column 5, lines 67 - column 6, line 2, “the time and event of each buyer that checks out through a checkout lane during that same time interval”), and recording the retail performance metric record for a plurality of events during the transaction (figure 9A, “1) maximum wait by any shopper, 2)

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average wait per shopper, 3) maximum line length, 4) average line length, 5) cashier idle time percentage”).

6. As per claims 2 and 5, Frey et al discloses the method and system, wherein the entry record includes a time (column 5, line 3, “entry time data”) and an entry identifier field and the recording the retail performance metric record step comprises adding the entry identifier field value of the entry record associated with the retail performance metric to the retail performance metric record (figure 9A, “maximum wait by any shopper, average wait per shopper, maximum line length, average line length, cashier idle time percentage”).

7. As per claims 3 and 8, Frey et al discloses the method and system, wherein the retail performance metric record comprises an entry identifier field (column 8, line an array of arrival times for each second during the two-hour period”), a type field (figure 9A, “1) maximum wait by any shopper, 2) average wait per shopper, 3) maximum line length, 4) average line length, 5) cashier idle time percentage”), and a time field (column 5, line 3, “entry time data”).

8. As per claims 6, 9 and 12, discloses a computer implemented system for storing a retail performance metric record, the retail performance metric record being a function of the retail performance metric type and a retail performance metric including the time elapsed waiting for and receiving an input, comprising:

a processor for receiving and transmitting data (column 4, line 53 - 54, “these signals are transmitted to a signal processor, and from there to a central processing unit”);

a memory coupled to the processor, the memory having stored therein sequences of instructions which, when executed by the processor, cause the processor to receive an input indicative of an event occurring at a point of sale (POS) station during a transaction (figure 2, “retrieve shopper traffic data”), determine the retail performance metric type of the input received at the POS station during the transaction, record an entry record indicative of the input received, record a retail performance metric record including the retail performance metric and the retail performance metric type (figure 5A, “average traffic this minute -5 to +4”), the retail performance metric including the time elapsed waiting for and receiving the input, and repeat the steps of receiving, determining, recording the entry record, and recording the retail performance metric record for a plurality of events during the transaction (figurer 9A, “1) maximum wait by any shopper, 2) average wait per shopper, 3) maximum line length, 4) average line length, 5) cashier idle time percentage”).

9. As per claims 7 and 10, discloses The system of claim 6 wherein the memory further includes sequences of instructions which, when executed by the processor, cause the processor to record the entry record including an entry identifier field and to record the retail performance metric record by adding the entry identifier field value of the entry record associated with the retail performance metric to the retail performance metric record (figure 9A, “report results of 200 simulations to user” where the fields are “1) maximum wait by any shopper, 2) average wait per shopper, 3) maximum line length, 4) average line length, 5) cashier idle time percentage”).

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10. As per claims 13 and 14, Frey et al discloses the method and system, wherein the type field comprises an RPM (Retail Performance Metric) type and/or a time type category (column 8, lines 38 - 41) maximum wait by any shopper, 2) average wait per shopper, 3) maximum line length, 4) average line length, 5) cashier idle time percentage”).

***Response to Amendments***

11. Applicant's arguments filed September 23, 2003 have been fully considered and are deemed unpersuasive.

Applicant argues that Frey teaches that a single transaction has occurred and does not teach the retail performance metric that measures activity during the transaction. However the applicant does not explicitly define just how the specific performance metric claimed by the applicant is in any way significantly different than the time interval performance metric taught by Frey. Indeed, the applicant claims the performance metric of time elapsed waiting for and receiving input. This wait time is precisely the type of performance metric taught by Frey through the use of data from a Point-Of-Sale interface. Said interface supplies the type of information that indicates that a transaction has occurred and, when compared with the customer tracking data, does in fact produce the wait times and intervals claimed by the applicant.

In light of the above stated facts, examiner respectfully states that applicant's arguments have been fully considered, deemed unpersuasive, and the rejections under the prior Office Action, mailed September 23, 2003, are maintained.

***Conclusion***

12. Applicant's amendment necessitates the new ground(s) of rejection presented in this Office Action. Accordingly, THIS ACTION IS MADE FINAL. See MPEM 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of final action.

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric Shaffer whose telephone number is (703) 305-5283. The Examiner can normally be reached on Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax number for the organization is (703) 305-0040/308-6306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 305-3900.

Eric Shaffer

November 21, 2003

*Susanna Diaz*  
*Susanna Diaz*  
*Primary Examiner*  
*A.U. 3623*